Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

No. 79-1992

WAYNE C. LA VELLE, Petitioner

v

Workmen's Compensation Appeals Board State of California
TRANS WORLD AIRLINES
LIBERTY MUTUAL INSURANCE CO.
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS LOCAL 1111
DISTRICT 142 OF THE INT'L
ASSOCIATION OF MACHINIST
HARTFORD ACCIDENT & INDEMNITY CO
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

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June 18, 1980

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PETITION FOR A WRIT OF CERTIORARI
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The petitioner Wayne C. LaVelle respectfully prays that a Writ of Certiorari to review the Judgement and Opinion of the Court of Appeal

of the State of California, in and for the First Appellate District, Division One, enter this proceeding on June 18, 1980. The multi-Defendants have been listed as pursuant to Rule 23 (5)and/or Rule 15 (3) therein.

OPINION BELOW

No opinion of the Court of Appeal was issued, but the denial for Writ of Review appears in the Appendix hereto. No opinion was issued by the California Supreme Court when petition for hearing was denied. A copy of the Supreme Court's order denying hearing also appears in the Appendix hereto.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves Section 1 of the Fourteenth Amendment, U.S. Constitution and U.S.C. §1257 (3); Californis Constitution, Article 1, Section 13; California Labor Code §5408. These provisions are reprinted in Appendix (A).

JURSIDICTION

The judgement of the Court of Appeals of California, First Appellate District, Division One, on Case N. 1 CIVIL NO. 47704, was entered February 22, 1980, denying hearing and thus affirming the State of California Worker's Compensation Appeals Board Award, dated May 25, 1979. The Court of Appeal denied a timely petition for Writ of Review. Thereafter, on March 3, 1980, the Supreme Court of Californis denied a petition for hearing on March 20, 1980.

This is one of a series of cases which commenced with the filing of an application on November 10, 1971, in connection with an incident occurring on August 4, 1970, to the applicant's right knee while applicant was employed as a rampserviceman by Trans World Airlines.

Subsequent thereto as this litigation progressed, the applicant had other incidents and filed during the course of this litigation 12 applications, i.e., eleven additional ones. In addition to the present case at bar, 1 CIVIL NO. 47704, or WCAB NO. 74 LA 391 394, concerning an injury to the hand, the following are requested to be consolidated into one case

because all the cases were tried at one time:

CASE NO.	DATE OF INJURY	PART OF BODY
71 LA 371 256	Aug. 4, 1970	right knee
71 LA 370 927	Jan, 22, 1971	right knee
73 LA 380 934	Oct. 3, 1972	right knee
73 LA 380 935	Dec. 13, 1972	right knee
73 LA 380 936	Feb. 12, 1973	right knee
74 LA 387 156	Jan. 26, 1974	emotional, specific
74 LA 392 377	Aug. 4, 1970 Oct. 25, 1974	emotional, cumulative trauma
74 LA 392 422	Mar. 13, 1974	hands--chemical dermatitis
74 LA 391 394 (present case)	May 4, 1974	hand--crushing injury
75 LA 394 945	Dec. 31, 1974	back
76 LA 403 651	Feb. 18, 1976	lungs
76 ING 38 740	July 13, 1976	internal& psychological trauma

The jurisdiction of this Court is invoked pursuant to U.S.C. §§1257 (3).

QUESTIONS PRESENTED

I.Does the denial by a state Administrative Law Court to a request by an indigent claimant for the appointment of counsel to assist him at trial for compensation for serious physical and mental injuries constitute a deprivation of the claimant's rights in violation of the Fourteenth Amendment?

II. In the present case, did the refusal of the state Administrative Law Court to appoint counsel to assist Petitioner at trial, having expressly requested such assistance, deprive petitioner, an indigent person, of his rights in violation of the Fourteenth Amendment?

III. Have the elements of fairplay been denied by the State of California Worker's Compensation Appeals Board, in it's failure to use due diligence with respect to California Labor Code 5408 when the petitioner, an incompetant at the time, appeared before the court without representation, inconsistent with the Fourteenth Amendment?

STATEMENT OF THE CASE

CONSOLIDATION OF CASES as per Rule 23 (5) and 15 (3). Where several cases are sought to be reviewed on certiorari to the same court that involve identical or related questions, it shall suffice to file a single petition for Writ of Certiorari covering all the cases.

HOW THE FEDERAL QUESTION WAS PRESENTED

The Federal question sought to be reviewed was raised by a pleading in the petition for Writ of Review on page six to the Court of Appeal of the State of California, First Appellate District, Division One. Again, in the Supreme Court of the State of California, in the applicant's Petition for Hearing on page five, the same pleading regarding the federal question was used as follows:

> Unless the Findings and Award action taken by the Board is annulled, petitioner will be deprived of his property without due process of law in violation of Section 13, Article 1, of Section 1, of the Fourteenth Amendment of the Constitution of the United States, and petitioner claims benefit and protection.

Because the applicant did not know how to correctly introduce medical evi-

dence, certain documents were not considered by the court. This violated the fairplay rule because the medical reports upheld the applicant's contention of permanent disability.

APPLICANT'S REQUEST FOR COUNCIL

On the first day of trial, December 14, 1976, Judge Fluharty gave permission to applicant's attorney, Joseph Miller of James George Law firm, permission to withdraw from the preceedings. I objected to the action of the court in taking away my legal representation. The Judge asked the applicant if he needed time to obtain an attorney, while also stating that if the trial did not proceed, the Judge would consider a motion by the defense to dismiss the entire trial. Because I did not want to lose all my rights, I chose for the trial to continue. However, I did not wave my rights to an attorney.

Whenever the applicant was called to testify, the defense would concentrate their questions on subjects that were emotionally upsetting to the applicant, causing him to fixate on traumatic emotional events and his psychological

obsessions. The petitioner, who was under constant medical and psychiatric therapy, could not properly represent himself while these types of question were asked.

On December 13 or 14, as the petitioner was testifying to his contemplation of suicide because of the trauma from working with TWA and the IAM, he became totally incapacitated as he broke down and cried uncontrollably while on the stand. He had to be helped down from the stand by his brother.

On May 31, 1977, the Judge became angry with the applicant because the applicant did not serve the IAM in the proper way, and asked applicant why he didn't get an attorney. Applicant said that he had tried, but that no attorney wanted to take his cases. The applicant again requested that the court appoint him an attorney. Request was denied.

On December 5, 1977, the Judge stated that if the applicant would get an attorney, the case would not be such a mess. Applicant again stated that he had tried, but that no attorney wanted to take another lawyer's work. Applicant told

the court that he was a sick man, suffering from both physical and mental injuries, and requested that the court appoint him an attorney. Request was denied.

Throughout the trial when the petitioner was in a confused, obsessed mental state, many stipulations were made that the applicant did not understand.

At one time, the Judge yelled at the applicant, asking what was wrong with him (the petitioner)--couldn't he see that they were trying to help him?

The back case was appealed to the Court of Appeal, State of California, First Appellate District, Division Four, on March 10, 1980.

1 CIVIL NO. 49089 was assigned as the civil number opposed to the Worker's Compensation No. 75 LA 394 945. In this petition for Writ of Review, the cases below, by motion, were asked to be consolidated. The applicant's incapacity because of the psychological problems throughout trial were raised. The Federal questions dealing with the Fourteenth Amendment, Section 1, were raised at the same as supra.

It is noted that the Worker's Compensation Appeals Board does not produce an exact record of the proceedings. The Judge creates a summary of evidence. This does not reflect the total essence of the cases. Because of the controversal matter in this case, the entire transcript must be obtained to insure justice.

REASONS FOR GRANTING THE WRIT

I. The decisions below conflict with the decision of GIDEON V WAINWRIGHT (372 U.S. 335). As in GIDEON V WAINWRIGHT (even though it is a criminal case), there is denial of due process and equal protection consequent upon the refusal to appoint counsel in state Worker's Compensation Court; although, here we can urge that the circumstances presented by the case are special rather than typical. The Petitioner is mentally incompetent and inexperienced. The issues and facts of law were enormous because of the twelve cases being tried at once. The conduct of the trial left much to be desired; however, this is an inevitable consequence of the absence of counsel for the petitioner.

II. Gideon v Wainwright should be extended to matters of civil administrative law courts, expecially concerning property and personal rights and liberty. The Fourteenth Amendment requires counsel for serious criminal offense, but the state takes away the right to a jury trial by statue. A person can be indigent

because he can no longer work by reason of an industrial injury. Industrial injury cases are not handled by all attorneys. And as in the present cases, lawyers refused to take on cases they didn't feel were worth the trouble.

III. The basic concept of worker's compensation did not have attorneys in mind, but that of the worker and the employer coming together. Now, the Worker's Compensation Courts are filled with experienced attorneys representing the employer, but few attorneys to represent the worker.

IV. A person cannot effectively represent himself. The assistance of counsel is necessary to due process and to a fair trial. Without council, the applicant cannot possibly evaluate the lawfullness of his claim, the validity of motions or information presented by the defense counsel.

V. To proceed in Worker's Compensation cases with the poor having no counsel while we guarantee a right to counsel to those who can afford it is also a denial of equal protection under the law.

VI. Witnesses at administrative proceedings are frequently accorded a statutory right to assistance of counsel; 6 (a) of the Administrative Procedure Act (5-U.S.C. §1005 (a) right to counsel). It was also held below in U.S. v Smith (1949), D.C. Conn.) 87 F. Supp. 293- 6(a). It was specifically held that 6 (a) grants the right to representation by counsel, not only to persons who appear before administrative agencies in the sense of responding to process as a party to an action, but also to witnesses summoned to appear before a federal agency. The petitioner could claim he was a witness as a party to the action. At any rate, there was no legal representation given by the Worker's Compensation Appeals Board.

VII. In Bowles v Baer (1944, C.A. 7th ILL) 142, F. 2d. 787, the court said, "It is not at all clear from the court's opinion whether in speaking of rights to which parties at hearing are "entitled", the court had reference to basic constitutionally rights, or merely to rights normally accorded parties by administrative agencies."

VIII. To contrast the above with procedural due process: Constitutionally, petitioner is entitled--that is, if the right to be affected by the administrative ajudication is a constitutionally protected right--and the administrative proceeding must meet the test of fairness, and the denial of counsel may, under particular circumstance, indicate a lack of such fairness. Thus, in Ex parte Chin LOY YOU(1915, D.C. MASS.) 223 F. 833, the court acknowledged that the right to counsel secured by the Sixth Amendment relates only to criminal prosecutions, but said that it is equally true that provision was inserted in the constitution because the assistance of counsel was recognized as essential to any fair trial of a case against a prisoner. It was said that to make a defendant's substantial rights in a matter involving personal liberties the proceedings be called criminal or civil was unsound.

To this last point the petitioner argues as the key issue of contention. It is unsound in this modern day to distinguish one's right to have an attorney

when personal liberty and property rights are involved only when a criminal trial is at hand. It is an unsound fact of law. Poor people have a right to an attorney Whether it is a criminal or civil case should not be the guild line.

The necessity for council in any trial is plain. No individual who is not trained can possibly know or pursue the technical, elaborate, and sophisticated measure necessary to assemble and appraise facts, analyze law, determine contentions, marshal and present all factual and legal considerations. The adage, "He that is his own lawyer has a fool for a client" from the Oxford Dictionary of English Proverbs 112 (2d ed. 1948) has a psychiatric basis. Expecting an accused person, especially indigent, to rise to the level of operating skill and efficiency necessary to defend himself is impossible. Most dependants, after arrest and imprisonment, cannot even function at their normal level of competence.

COMPETENCE

The question of legal compentence has been raised in the manner that the Worker's Compensation Judge applied the

state statute to the merits of this case. From the start of the proceeding the issue of mental injury caused from employment was raised. Even with this knowledge and medical evidence at hand confirming the petitioner's fragil emotional condition, the Judge allowed the applicant's attorney to be released. The petitioner in no way intended to be alone in the court room without assistance of legal counsel.

SPECIAL CIRCUMSTANCES

The Appeals Board may determine the fact of incompetency, in fact has a duty to the other members of the applicant's family to make this determination with due diligence. This simply was not done, and because of the Boards failure to act the petitioner's rights under the Fourteenth Amendment were denied.

The official transcript of Dec 13 &14, 1976, WCAB hearing will show the unstable condition of the applicant after the Judge released the applicant's counsel. The petitioner's mental state of Manic-Depressive Syndrome had episodes of Psychosis.

The fact is that it took the trial Judge six years to reach a decision that

the petitioner had psychiatric disability. The intent of the Labor Code Section 5408 has been invalidated instead of protecting rights of the worker.

The policy used in this case is inconsistant with the Fourteeth Amendment

(Special Circumstances continued on next page)

Was the Judge to ask the applicant if he was competent? How would the claimant know if he was incompetent? Should the doctor of petitioner send medical reports telling of psychiatric problems? This last procedure was followed. The Judge's response was inadequate. The ruling on the psychological cases proved that there was a permanent disability. Why then did the Judge not allow the applicant to have the assistance of requested counsel?

In view that the petitioner was in a "special circumstance", being incapacitated by the definition of the California Civil Law, and being under constant psychological medical treatment, constitues a denial of fundamental fairness.

THE JUDGE CANNOT ACT
AS COUNSEL FOR THE APPLICANT

The trial judge must assure himself by a thorough investigation that the applicant has not ignorantly or incompetently wavied his right to counsel. (The applicant did not wave his right to counsel.) One man cannot act as trial judge and counsel for the applicant. As Justice Sutherland stated, in speaking for the court in POWELL v ALABAMA, 287 U.S. 45,

61, (1932):

> How can a judge, whose functions are purely judical, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court that the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense or participate in those necessary conferences between councel and accused which sometimes partake of the inviolable character of the confessional.

It is submitted that the Judge did act as liaison between the multi-defense counsels and the lone applicant. This was only as a result of many outrageous outbreakes and objectional conduct by the applicant.

DENIAL OF COUNSEL TO THE INDIGENT VIOLATES BOTH DUE PROCESS AND EQUAL PROTECTION

The refusal to appoint an attorney to represent a destitute person results in discrimination against persons solely upon poverty. There is no doubt that an applicant in the Worker's Compensation Court has an unqualified right under the Fourteenth Amendment to be heard through

counsel he has retained. The problem being here is that there were already two previous attorneys involved, and the third was released by the Judge. Many of the attorneys that applicant had interviews with wanted large sums of money because there were so many cases (12) being tried at one time. The lien form, submitted by the former attorney, reflects the amount of money many attorneys wanted, $4000. As the petitioner would walk into a prospective lawyer's office, the lawyer would take one look at the twelve cases, and refuse to handle them. I submit that if a person with funds is entitled to be heard through an attorney, the same privilege must be extended to indigents. In the case of those able financially to hire counsel, the rule is not limited to special circumstances. It is absolute and complete, and a state may not restrict it. How then can the right be restricted in the case of the poor?

In many compensation cases today, the employer has a well-paid attorney through the company's insurance company. These are the rich and super rich against lay people. In the present case, one lay

man, an incompetent, was thrown against Corporate Giants and a Multi-National insurance company and an International Union. Thus, the indigent applicant cannot be denied an unqualified right solely because of poverty. To do so results in a denial of equal protection. "The need of counsel is the same, whatever the economic status of the accused." McNEAL v SULVER, 365 U.A. 109, 118 (1961) (Douglas, J., concurring).

Petitioner has been denied the right to assistance of counsel in violation of the Fourteenth Amendment of the Constitution of the United States.

The following shows the difficulty that Trans World Airlines and Hardford Accident & Indemnity Company's attorneys had with aspects of the trial. The trial consisted of a total of twelve cases being tried at once before a sound judge, reasonable attorneys for the defense and an incompetent petitioner. In the defendent's Petition for Reconsideration, Worker's Compensation Appeals Board of California, page 6:

> However, the Board will note that the record in this case

> is massive, confusing, contradictory, and although the trial judge made a determined and good faith effort to permit all issues raised and evidence offered thereon, the fact of the matter remains that at no time was your petitioner (defendant) apprised of the fact that it was involved in a further Application and that evidence was actively being presented thereon with respect to issues of which it was not aware and based upon jurisdictional facts that it had no opportunity to either accept or rebut.

The defendant won a retrial on this specific Worker's Compensation Case, No. 76 ING 38 740.

It is clear that appointment of counsel for this petitioner under these special circumstances is a fundamental right, essential to a fair trial.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Court of Appeal of the State of California, First Appellate District, Division one.

Respectfully submitted,

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June 18, 1980